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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/584,230	05/17/2007	Goetz Braeuchle	10191/4553	9837

26646 7590 01/29/2010

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EXAMINER	
VANAMAN, FRANK BENNETT	
ART UNIT	PAPER NUMBER
3618	
MAIL DATE	DELIVERY MODE
01/29/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/584,230	BRAEUCHLE ET AL.	
	Examiner	Art Unit	
	Frank B. Vanaman	3618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *10-18* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *10-18* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *23 June 2006* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *6/23/06*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Information Disclosure Statement

1. Applicant's Information Disclosure Statement, filed June 23, 2006, is acknowledged and has been considered.

2. The examiner notes that applicant has filed only translated abstracts for the foreign patent documents. While the two German documents appear to have corresponding US applications from which a greater quantity of translated material may be derived, the EPO document does not appear to have a corresponding English language equivalent.

Applicant should be aware of the following concerning the explanation of relevance of a foreign document (see MPEP 609.04(a)):

"The requirement for a concise explanation of relevance is limited to information that is not in the English language. The explanation required is limited to the relevance as understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information at the time the information is submitted to the Office. If a complete translation of the information into English is submitted with the non-English language information, no concise explanation is required. An English-language equivalent application may be submitted to fulfill this requirement if it is, in fact, a translation of a for-eign language application being listed in an information disclosure statement. There is no requirement for the translation to be verified. Submission of an English language abstract of a reference may fulfill the requirement for a concise explanation. Where the information listed is not in the English language, but was cited in a search report or other action by a foreign patent office in a counterpart foreign application, the requirement for a concise explanation of relevance can be satisfied by submitting an English-language version of the search report or action which indicates the degree of relevance found by the foreign office. This may be an explanation of which portion of the reference is particularly relevant, to which claims it applies, or merely an "X", "Y", or "A" indication on a search report. The requirement for a concise explanation of non-English language information would not be satisfied by a statement that a reference was cited in the prosecution of a United States application which is not relied on under 35 U.S.C. 120.

If information cited or submitted in a prior application relied on under 35 U.S.C. 120 was not in English, a concise explanation of the relevance of the information to the new application is not required unless the relevance of the information differs from its relevance as explained in the prior application.

The concise explanation may indicate that a particular figure or paragraph of the patent or publication is relevant to the claimed invention. It might be a simple statement pointing to similarities between the item of information and the claimed invention. It is

permissible but not necessary to discuss differences between the cited information and the claims. However, see Semiconductor Energy Laboratory Co. v. Samsung Electronics Co., 204 F.3d 1368, 1376, 54 USPQ2d 1001, 1007 (Fed. Cir. 2000) ("[A]lthough MPEP Section 609A(3) allows the applicant some discretion in the manner in which it phrases its concise explanation, it nowhere authorizes the applicant to intentionally omit altogether key teachings of the reference.").

In Semiconductor Energy Laboratory, patentee during prosecution submitted an untranslated 29-page Japanese reference as well as a concise explanation of its relevance and an existing one-page partial English translation, both of which were directed to less material portions of the reference. The untranslated portions of the Japanese reference "contained a more complete combination of the elements claimed [in the patent] than anything else before the PTO." 204 F.3d at 1376, 54 USPQ2d at 1005. The patentee, whose native language was Japanese, was held to have understood the materiality of the reference. "The duty of candor does not require that the applicant translate every foreign reference, but only that the applicant refrain from submitting partial translations and concise explanations that it knows will misdirect the examiner's attention from the reference's relevant teaching." 204 F.3d at 1378, 54 USPQ2d at 1008."

Drawings

3. The drawings are objected to because in figure 3, at the 'yes' outputs of steps S1, S2, S3, S4, it appears as though "J" should be --Y-- (note that as a result of such a change, the specification at page 13, line 35 may require amendment). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the

applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 10 and 12-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Steinle et al (EP 1 304 251, cited by applicant). Steinle et al. teach an arrangement for a vehicle with a cruise control system and a "stop and go" system (paragraphs 0006 and 0008) which can function to keep the vehicle in a stopped condition (paragraphs 0009, 0010, 0011) and resume a following condition, wherein the vehicle may be placed in a waiting state (e.g. stopped) at such time as a forward vehicle is stopped and the host vehicle brake pedal is operated, the reference acknowledging that commonly it is known to use an operation of the brake pedal to perform a shutoff control (paragraph 0010), however that this function may serve to introduce an unsafe vehicle operation condition (see paragraph 0011) and should be avoided for safety reasons, and as such, proposes to use one of plural other conditions such as a velocity being below a minimum speed (such as 10 km/h) and or the operation of a control for longer than the passing of a specified time (see paragraph 0012), such that the meeting of one or more of these predetermined conditions can control the application of the allowing or prevention of shutoff of the cruise and "stop and go" systems, wherein the cruise control thus remains in an active or activated state even when the brake control is operated.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Steinle et al. (cited above). The reference to Steinle is discussed above, and while teaching a low vehicle speed which is used to select a shutoff mode, fails to teach a speed of zero. In that the reference initially teaches the control of shutoff based on a vehicle speed, and in that once a general condition is disclosed, the optimization of an operating range for the purpose of fine-tuning a control algorithm and/or improving responsiveness and/or regulating a degree of hysteresis is within the skill of the ordinary practitioner, and it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the selection of a low speed to control selection of a shutoff condition as a speed of zero (e.g., adjusting the conditional speed downward) in order to optimize the operating range of selecting a shutoff condition, for example in order to further tune a control algorithm and/or improve responsiveness, and/or adjust a degree of hysteresis in the control system.

Note additionally that in the case of the vehicle of Steinle et al. being stopped (i.e., already experiencing a velocity of zero) and the remaining shutoff conditions are applicable, the shutoff condition would occur at a vehicle velocity of zero, and as such, the vehicle is capable of performing a shutoff condition at a velocity of zero

8. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Steinle in view of Gilling (US 5,771,481). The reference to Steinle et al. is discussed above and fails to teach that the start of the vehicle from the wait state is only allowed upon confirmation from the driver. Gilling teaches that it is well known to prevent resuming of a moving state of a vehicle (while the cruise control still remains enabled) after stopping

(step 48) until a driver explicitly confirms resumption of a cruise condition (54, 56). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the vehicle operation arrangement taught by Steinle et al. with an explicit confirmation step before resumption of a running control is allowed, as taught by Gilling et al. for enhancement of safety, for example to prevent the vehicle from automatically starting to run at an undesired time.

9. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Steinle et al. in view of Satonaka et al. (US 5,749,427). The reference to Steinle et al. as discussed above, whilst teaching the operation of certain control elements in the vehicle for placing the shutoff condition into operation, does not teach the operation of the brake pedal for longer than a minimum period as making the shutoff operational. Satonaka et al. teach that it is well known to use the time of engagement of a brake pedal (See figure 9, steps 40 and 32, also note col. 11, lines 7-16) to control the disengagement of a function (e.g., step 32). In that Steinle et al. initially already teaches that a control device may serve to initiate the shutoff function, and that Satonaka teach that a shutoff may be initiated by the engagement of a brake for longer than a predetermined time, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the initiation of the shutoff feature in the vehicle taught by Steinle et al. as operable by holding a brake condition for longer than a predetermined time, for the purpose of allowing an existing brake actuator to be used to control this function (rather than a separate additional control), thus making beneficial use of the existing controls of the vehicle and not requiring either the provision of further controls nor the teaching of a user the operation of further controls.

10. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Steinle et al. in view of Simonyi et al. (US 4,867,288). The reference to Steinle et al. as discussed above, whilst teaching the operation of certain control elements in the vehicle for placing the shutoff condition into operation, does not teach the operation of the brake pedal for multiple times as making the shutoff operational. Simonyi et al. teach that it is

well known to use a number of plural engagements of a brake pedal (See col. 7, lines 25-38) to control an operation of a function (e.g., placing an operative value into a memory location). In that Steinle et al. initially already teaches that a control device may serve to initiate the shutoff function, and that Simonyi et al. teach that a function may be engaged by the engagement of a brake for a number of times, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the initiation of the shutoff feature in the vehicle taught by Steinle et al. as operable by operating a brake condition for a number of times, for the purpose of allowing an existing brake actuator to be used to control this function (rather than a separate additional control), thus making beneficial use of the existing controls of the vehicle and not requiring either the provision of further controls nor the teaching of a user the operation of further controls.

11. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Steinle et al. in view of Hirasago (US 6,332,108). The reference to Steinle et al. as discussed above, whilst teaching the operation of certain control elements in the vehicle for placing the shutoff condition into operation, does not teach the operation of the brake pedal for a specific intensity or depression gradient as making the shutoff operational. Hirasago teaches that it is well known to use a measured further degree of depression of a brake pedal (See figure 5, step 25) to control the selection of a function (e.g., step 22). In that Steinle et al. initially already teaches that a control device may serve to initiate the shutoff function, and that Hirasago teach that a functional control may be initiated by the engagement of a brake for to a further degree of depression, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the initiation of the shutoff feature in the vehicle taught by Steinle et al. as operable by engaging a brake condition to a further depth of depression, for the purpose of allowing an existing brake actuator to be used to control this function (rather than a separate additional control), thus making beneficial use of the existing controls of the vehicle and not requiring either the provision of further controls nor the teaching of a user the operation of further controls.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hayashi et al. (US 4,402,376), Fastie (US 5,238,080), Nakamura et al. (US 6,044,321) and Warner (US 6,536,408) teach vehicle systems of pertinence.

13. Any inquiry specifically concerning this communication or earlier communications from the examiner should be directed to F. Vanaman whose telephone number is 571-272-6701.

Any inquiries of a general nature or relating to the status of this application may be made through either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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